

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
October 23, 2014

In re Baur, Minors.

No. 321432
Montmorency Circuit Court
Family Division
LC No. 13-003381-NA

Before: METER, P.J., and WHITBECK and RIORDAN, JJ.

PER CURIAM.

Respondent's parental rights to four children were terminated pursuant to MCL 712A.19b(3)(b) (child or sibling suffered physical injury or physical or sexual abuse by parent and there is a reasonable likelihood of future injury or abuse). Respondent appeals as of right with respect to the three youngest children but does not challenge the termination of his parental rights to an older child, T.B. We affirm.

T.B. accused respondent of sexually abusing her over a multi-year period. Respondent admitted to some of the abuse and pleaded guilty to a charge of second-degree criminal sexual conduct.

Respondent first argues that the trial court erred in finding clear and convincing evidence of statutory grounds to terminate his parental rights with respect to the younger children. We disagree. This Court reviews for clear error a trial court's factual findings and decision to terminate parental rights. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Clear error exists where the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id.*; *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008).

"To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been proved by clear and convincing evidence." *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). Here, the trial court cited MCL 712A.19b(3)(b), which provides for termination of parental rights in the following situation:

The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

Respondent does not dispute that the trial court properly terminated his parental rights to T.B. based on his admissions of sexually abusing her. The court found it reasonably likely that she would again be abused if placed in respondent's home. Respondent argues that there was no evidence that his younger daughter and two younger sons were ever abused or endangered. We note, initially, that the statute does not require proof that the siblings of an abuse victim were also abused. In addition, how respondent treated T.B. is "probative of how he will treat . . . [the] siblings." *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). Further, we note that respondent claimed during a psychological evaluation that T.B. manufactured the sexual abuse allegations and that he was considering a plea deal only to ensure a shorter jail sentence. There was no evidence that respondent acknowledged or took seriously his responsibility to manage his pathology to keep his children safe from physical or emotional harm. Respondent argues that there was no evidence of a disorder that indicated he was a threat to his three younger children. However, respondent's evaluating psychologist listed as "diagnostic formulations" "Sexual Abuse of a Child" and "Personality Disorder not otherwise specified with avoidant features." The psychologist also described many problematic issues. There was no evidence that respondent addressed his issues to ensure the well-being and safety of his children.¹ Under all the circumstances, we cannot find clear error with respect to the trial court's decision.

Respondent also argues that the trial court did not have evidence that termination of his parental rights to the three younger children was in their best interests. Once a statutory ground for termination has been established by clear and convincing evidence, the trial court shall order termination of parental rights if the court also finds that termination of parental rights is in the best interests of the child. MCL 712A.19b(5). Whether termination is in a child's best interests is determined by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In deciding a child's best interests, a court may consider the child's bond to his parent; the parent's parenting ability; the child's need for permanency, stability, and finality; and the suitability of alternative homes. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012).

Respondent argues that it was not in his younger daughter's best interests to terminate his parental rights because he has a strong emotional bond with her and she is well behaved in the community. However, in her psychological evaluation, T.B. also described significant positive feelings for respondent, despite the abuse. Additionally, the younger daughter's evaluating psychologist questioned the appropriateness of respondent having access to her and indicated

¹ See, generally, *Sturgis v Sturgis*, 302 Mich App 706, 712-714; 840 NW2d 408 (2013), in which this Court took judicial notice of a prior unpublished opinion indicating that where a parent abused siblings and did not demonstrate an acceptance of responsibility for his actions, there was evidence of a reasonable likelihood that a newborn sibling would be injured or abused in the foreseeable future if placed in the parent's home.

that she had exhibited some symptoms consistent with sexual abuse survivors. The trial court emphasized that she was about the same age as T.B. had been when the abuse began. The court also noted, correctly, that it would be difficult for a sibling family relationship to continue if respondent's rights were not terminated. Further, the court noted that respondent had difficulty with interpersonal relationships and difficulty processing information, failed to anticipate consequences, and had a serious impairment in perceiving reality. These findings were supported by the psychological evaluation. There was no evidence that respondent attempted to progress in overcoming his issues. Additionally, the children's mother had not demonstrated an ability to protect them from respondent.² Under all the circumstances, there was no clear error in the trial court's determination that it was in the younger daughter's best interests that respondent's parental rights be terminated.

Many of the same issues were also discussed by the trial court in determining that it was in the best interests of the other two children to terminate respondent's parental rights to them. The court again emphasized that respondent had not taken responsibility for his actions, noted that the mother had protected respondent instead of her child, and noted that termination would facilitate stability and permanency with regard to the sibling relationships. Once again, we can find no clear error under all the circumstances.

Respondent argues that he can obtain counseling and have the supervision aspects of probation after his release from jail and that some sort of parental relationship with the children could thus continue. However, given the concerns as discussed above and the children's need for stability, we find no clear error with respect to the trial court's decision.

Affirmed.

/s/ Patrick M. Meter
/s/ William C. Whitbeck
/s/ Michael J. Riordan

² The mother's parental rights were not terminated and there is no indication in her psychological evaluation that she intended to terminate her relationship with respondent; she disbelieved T.B.'s allegations of abuse.